IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1020 (M/B) of 2006

Mohammad Nasir S/o Shaukat Ali
R/o Mohalla Chhipiyan West, Jaspur,
District Udham Singh Nagar

.... **Petitioner**

Vs

1. State of Uttaranchal through Principal Secretary Karmik Anubhag, Govt. of Uttaranchal, Dehradun
2. Uttaranchal Public Service Commission, Ayog Bhawan Gurukul Kangri Kankhal, Hardwar through its Secretary
3. The Hon'ble High Court of Uttaranchal at Nainital through Registrar General

.....Respondents

Sri Pankaj Purohit, ld. counsel for the petitioner
Sri B.D. Kandpal, ld. counsel for Public Service Commission

Dated: - August 19, 2006

Coram: Hon'ble P.C.Verma,J.
Hon'ble B.S. Verma,J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the office memorandum dated 27.7.2006 issued by Respondent No.2 contained in Annexure No.4 whereby the application form of the petitioner for Uttaranchal Judicial Services Civil Judge (Junior Division) (Pre) Examination 2005 has been rejected on the ground of petitioner being overage on the first date of January, 2006.

2. Learned counsel for the petitioner submitted that petitioner is an O.B.C. candidate and requisition for appointment for the aforesaid examination was sent in

the year 2005 and accordingly the year of appointment became 2005 and as such he was not over age on 1.1.2005. He referred the definition of the year of Recruitment Rule 3 Clause (1) of Uttaranchal Judicial Service Rules, 2005 ***(hereinafter will be referred to as the Rules)*** which reads as under:-

> *Rule-3 Clause (1): -- "Year of recruitment" means a period of twelve months commencing from the first day of 'January' of the calendar year in which the process of recruitment is initiated by the appointing authority."*

3. At the strength of this definition, learned counsel for the petitioner submitted that since the process was started by the appointing authority i.e. the State Government on the recommendation of the High Court who sent a requisition to start the process, therefore, the age is to be reckoned according to this Rule. The definition of year of recruitment is a general one defining the year of recruitment but relevant Rule for age limit is Rule-9 of the Rules, which reads as under:-

> *9. "A candidate for direct recruitment to the service must have attained the age of 22 years and must not have attained the age of more than 35 years on the first day of January of the year in which the recruitment is to be made.*
>
> *Provided that the upper age limit in the case of candidate belonging to Scheduled castes, Scheduled Tribes, Other Backward Classes and other such categories as may be notified by the Government from time to time shall be greater by such number of years as may be prescribed."*

4. From a perusal of above, it is clear that Rule 9 of the Rules clearly provides that the candidate must have attained the age of 22 years and must not have

attained the age of 35 years on the first day of January of **the year in which recruitment is to be made.**

5. The recruitment is made when the vacancies are notified and applications are invited. This process was started in the year 2006. According to Rule 9 of the Rules, a candidate must not have attained age of more than 35 years. Since the petitioner's date of birth is 2.8.1965 and after adding 5 years being O.B.C. candidate in 35 years, it becomes 40 years. After adding the said age limit i.e. 40 years to the date of birth of the petitioner, the petitioner had attained the age of 40 years on 1.8.2005, therefore, it is clear that the petitioner is over age by 4 months and 29 days.

6. In view of the above, it is clear that candidature of the petitioner has rightly been rejected. The petition is devoid of merit and is hereby dismissed. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang